

## Court Ruling Focuses on Accountability of Insurers' Medical Directors

A patient is recommended for a specific procedure to treat a medical problem and has filed the necessary records and documents for review by the insurer. However, the insurer's medical reviewer contradicts the opinion of the patient's physicians, decides the treatment is not medically necessary and refuses to precertify the procedure.

This scenario reflects an occupational concern for many physicians who perform tests and subsequently recommend treatment procedures—that their professional recommendations and judgments can be overruled by payers and they have no recourse to debate the payer's medical director's accountability in such instances.

Although precertification procedures by insurers, managed care organizations and other payers have been heavily scrutinized, a recent decision by the Arizona Court of Appeals (*Murphy v. Arizona Board of Medical Examiners*, Case Nos. 1 CA-CV 95-0327 and 1 CA-CV 96-0182, 7/15/97) upholding a ruling made by the Arizona Board of Medical Examiners (BOMEX) to take action against the medical license of an insurer's medical director for denying precertification of a medically necessary procedure spotlights the accountability issues of payers' medical reviewers and their role in the delivery of patient care. This ruling also has particular relevance given that insurers cannot indemnify their medical directors against complaints to state licensing boards in malpractice issues.

In the Arizona case, a patient presented with symptoms that appeared to be acute cholecystitis and was referred to a surgeon, who recom-

mended that a laparoscopic cholecystectomy be performed. After a review of the patient's records, the insurer's medical director refused to precertify the procedure, finding it medically unnecessary. The patient's surgeon performed the surgery anyway, despite the insurer's refusal to precertify. The insurer eventually paid for the procedure when postsurgical pathologic results corroborated the surgeon's initial diagnosis.

Although the patient filed a claim with the Arizona State Department of Insurance that was subsequently dismissed, the surgeon took a different course of action: he filed a complaint against the medical reviewer with BOMEX. At issue was what action, if any, the licensing board could take in an "insurance" matter because, in the insurer's view, the medical director was not practicing medicine. After a review of the case, BOMEX found that the medical director had been practicing medicine and issued an advisory letter of concern about "an inappropriate medical decision which could have caused harm to a patient."

The reviewer and insurer sued BOMEX, stating that the reviewer had not practiced medicine and that decisions about insurance benefits were beyond the jurisdiction of the licensing board. However, the Arizona Court of Appeals decided in favor of BOMEX. The court found that the reviewer, although not involved in the traditional practice of medicine, was accountable because he had made a medical decision when he substituted his medical judgment in place of that of the patient's physicians in determining the medical necessity of a proposed procedure. Moreover, the court

found that the state's insurance laws did not negate the licensing board's jurisdiction because the reviewer was not an insurance provider but rather an employee "who makes medical decisions for his employer on whether surgeries or other nonexperimental procedures are medically necessary. Such decisions are not insurance decisions but rather medical decisions." The court's opinion was that the medical board can indeed review any medical decision that could affect the health or safety of a patient or the public.

It is too soon to know the ramifications of this decision nationwide. However, many medical practitioners, especially those in medical specialties, see the ruling as a positive and significant outcome. "It's all about accountability," says Dennis D. Patton, MD, of the division of nuclear medicine at the University of Arizona Medical Center in Tucson. "A medical director's decision does have an impact on the patient's care." In light of this finding and its applicability in other jurisdictions, one consideration would be a state's legal definition of the practice of medicine. For states with legal thresholds similar to those used in the Arizona decision, then the findings of payers' medical directors or consultants could be subject to complaint to that state's medical license board by patients, their family members or their physicians if they believe the insurer's medical director made an inappropriate medical decision. As Patton cogently observed, "This ruling puts medical directors on notice to do the right thing."

—Eleanore Tapscott